

**REMARKS**

Entry of the foregoing, reexamination and reconsideration of the subject application, pursuant to and consistent with 37 C.F.R. § 1.116, are respectfully requested in light of the remarks which follow.

By the foregoing amendment, claims 1, 5, 14, 15, and 19 have been amended.

Specifically, claims 1, 5, 14, 15, and 19 have been amended, without prejudice or disclaimer, to delete the phrase "or functional fragments thereof[.]". Applicants reserve the right to file one or more continuation or divisional applications directed to the canceled subject matter.

Claim 1 has been further amended to recite, as suggested by the Examiner, "said DNA primers" in line 5 and to add, at the end of c), the following phrase: "and identifying said infectious bacterial species based on said detection." No new matter has been added.

**I. Response to Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 1-5, 7-10, 13, and 23-24 have been rejected under 35 U.S.C. § 112, second paragraph, as purportedly indefinite. Applicants respectfully traverse these rejections.

In particular, the Examiner has asserted that independent claim 1 allegedly lacks a positive active step relating back to the preamble. To expedite prosecution in the subject application, and not to acquiesce to the Examiner's rejection, claim 1 has been amended to recite, at the end of c), the following phrase: "and identifying said infectious bacterial species based on said detection."

The Examiner has also argued that there is insufficient antecedent basis in claim 1 for recitation of "said primers" when the phrase "DNA primers" is what was previously recited. Again, to expedite prosecution in the present application and not to acquiesce to the Examiner's rejection, line 5 of claim 1, has been amended in accordance with the Examiner's suggestion to recite "said DNA primers[.]"

Applicants believe that the amendments to claim 1 obviate the Examiner's rejections under 35 U.S.C. § 112, second paragraph. Thus, withdrawal of such rejections are respectfully traversed.

## **II. Response to Objections to the Claims**

Claim 5 has been objected to because it specifically recites non-elected subject matter. As discussed in previous responses, Applicants have traversed and requested reconsideration of the various restriction requirements imposed upon the claims of the subject application. The Examiner has, however, maintained these requirements and, in the Office Action of November 5, 2007, has now objected to claim 5 for reciting non-elected subject matter.

Applicants right to petition these requirements is still preserved. *See* 37 C.F.R. § 1.144 ("Petition may be deferred until after final action on or allowance of claims to the elected invention . . ."). Thus, applicants respectfully request that the objection to claim 5 be held in abeyance until the Examiner has otherwise indicated that the claims of the present application are allowable.

## **III. Response to Rejections Under 35 U.S.C. § 102(b) and § 103(a)**

(i) Claims 1-2, and 4 have been rejected 35 U.S.C. § 102(b) as purportedly being anticipated by Haung (U.S. Patent No. 5,645,994).

(ii) Claims 3, 7, 8, 10, and 13 have been rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Haung (U.S. Patent No. 5,645,994) in view of Voelker (U.S. Patent Publication No. 2004/0048281).

(iii) Claims 4, 5, 23, and 24 have been rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Haung (U.S. Patent No. 5,645,994) in view of Hogan et al. (U.S. Patent No. 5,541,308) and Hopewell et al. (Journal of Bacteriology, 1990).

(iv) Claim 9 has been rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Haung (U.S. Patent No. 5,645,994) and Voelker (U.S. Patent Publication No. 2004/0048281) and further in view of Southern et al. (Nature Genetics, 1999).

Applicants respectfully traverse all four of the Examiner's rejections under 35 U.S.C. § 102(b) and § 103(a) -- see (i) through (iv) above. The basis for each of these rejections appear to be that independent claim 1 recites "functional fragments" and the Examiner has broadly interpreted this phrase to be at least a single nucleotide. To expedite prosecution in the subject application, and not to acquiesce to the Examiner's rejections, claim 1 has been amended, without prejudice or disclaimer, to delete the phrase "or functional fragments thereof[.]"

Applicants believe that the amendment to claim 1 obviates the Examiner's rejections under 35 U.S.C. § 102(b) and § 103(a). Thus, withdrawal of each of the rejections are respectfully traversed.

**CONCLUSION**

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

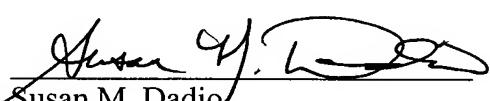
In the event that there are any questions relating to this Amendment and Reply, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such questions so that prosecution of this application may be expedited.

Respectfully submitted,

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